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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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8 ROBERT JOSEPH MCCARTY,  
9 Plaintiff,

Case No. 2:18-cv-00435-RFB-GWF

**ORDER**

10 v.

11 LAS VEGAS MEADOWS, LTD, *et al.*,  
12 Defendants.  
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14 **I. INTRODUCTION**

15 Before the Court are Defendants' Motion to Dismiss (ECF No. 8) and Plaintiff's Motion  
16 for Summary Judgment (ECF No. 13). For the reasons below, the Court grants Defendants'  
17 Motion to Dismiss for lack of subject matter jurisdiction.  
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19 **II. FACTUAL BACKGROUND**

20 The Court summarizes the facts alleged in Plaintiff's Amended Complaint. ECF No. 1.

21 On an unspecified date, Plaintiff Robert Joseph McCarty and a friend went on a tour of the  
22 Las Vegas Meadows community to see a mobile home unit listed for sale. A leasing agent drove  
23 Plaintiff in a golf cart and did not warn him of any potential hazards. When Plaintiff exited the  
24 golf cart, he struck his leg on a hazardous protruding step, which was unmarked and not painted  
25 yellow or orange to identify it as a hazard. Plaintiff's leg was injured and bleeding as a result of  
26 the incident. Las Vegas Meadows has a first aid kit but would not provide it to Plaintiff even  
27 though he was bleeding. Plaintiff has since developed a scar. Plaintiff seeks compensatory and  
28 punitive damages in the amount of \$200,000.

1                   **III.     PROCEDURAL BACKGROUND**

2                   Plaintiff filed the Complaint on March 9, 2018. ECF No. 1. Defendants filed the instant  
3 Motion to Dismiss on April 11, 2018. ECF No. 8. Plaintiff filed the instant Motion for Summary  
4 Judgment on August 6, 2018. ECF No. 13.

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6                   **IV.     LEGAL STANDARD**

7                   In order to state a claim upon which relief can be granted, a pleading must contain “a short  
8 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
9 8(a)(2). A defendant may move to dismiss a complaint for lack of subject matter jurisdiction. Fed.  
10 R. Civ. P. 12(b)(1). If subject matter jurisdiction is challenged, the burden is on the party asserting  
11 jurisdiction to establish it. In re Dynamic Random Access Memory Antitrust Litigation, 546 F.3d  
12 981, 984 (9th Cir. 2008) (citations omitted). Dismissal under Rule 12(b)(1) is appropriate if the  
13 complaint, considered in its entirety, fails to allege facts on its face that are sufficient to  
14 establish subject matter jurisdiction. Id. at 984–85.

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16                   **V.     DISCUSSION**

17                   For this Court to have subject matter jurisdiction over the instant action pursuant to 28  
18 U.S.C. § 1332, the parties must be diverse and the amount in controversy must exceed \$75,000.  
19 28 U.S.C. § 1332(a). When the plaintiff originally files in federal court, the Court determines the  
20 amount in controversy from the face of the complaint, which controls so long as the claim is made  
21 in good faith. Crum v. Circus Circus Enterprises, 231 F.3d 1129, 1131 (9th Cir. 2000). However,  
22 the Court must dismiss the action for lack of jurisdiction if, “upon the face of the complaint, it is  
23 obvious that the suit cannot involve the necessary amount.” Geographic Expeditions, Inc. v. Estate  
24 of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010) (quoting St. Paul Mercury Indemnity  
25 Co. v. Red Cab Co., 303 U.S. 283, 292 (1938)). “To justify dismissal, it must appear to a legal  
26 certainty that the claim is really for less than the jurisdictional amount.” Id. (quoting Crum, 231  
27 F.3d at 1131).

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1           The Court finds to a legal certainty that Plaintiff's claim cannot involve the amount  
2 necessary to confer jurisdiction. Plaintiff alleges that he injured his leg on a golf cart, causing  
3 bleeding and a scar. He faults Defendants for failing to provide a first aid kit. Plaintiff does not  
4 allege that any other medical care was sought, received, or necessary. Accepting all facts alleged  
5 in Plaintiff's complaint as true and construing them in the light most favorable to Plaintiff, the  
6 Court finds that it is obvious upon the face of the complaint that Plaintiff cannot prove damages  
7 exceeding \$75,000 in this case.

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9           **VI. CONCLUSION**

10           **IT IS ORDERED** that Defendants' Motion to Dismiss (ECF No. 8) is GRANTED and  
11 Plaintiff's Motion for Summary Judgment (ECF No. 13) is DENIED, as the Court finds it lacks  
12 subject matter jurisdiction.

13           **IT IS FURTHER ORDERED** that the Clerk of Court is instructed to close this case.

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15           DATED: March 11, 2019.

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**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**